HON'BLE SHRI G.S. SINGHVI, THE CHIEF JUSTICE

AND

HON'BLE SHRI JUSTICE C.V. NAGARJUNA REDDY

Writ Appeal No.1275 of 2006

Between:

Ram Prakash Agarwal and three others

.....Appellants

And

Sub-Registrar, Champapet,
Ranga Reddy District and two others

.....Respondents

:: JUDGMENT ::

Counsel for the Appellants : Shri V. Venkataramana

Counsel for Respondent No.3 : Shri S.M. Subhani

December 06, 2006

Per G.S. SINGHVI, CJ

This appeal is directed against order dated 13-10-2006 passed by the learned Single Judge in Writ Petition No.21209 of 2006, whereby he rejected the appellants' prayer for quashing notice dated 04-10-2006 issued by Sub-Registrar, Champapet, Ranga Reddy District (respondent No.1) requiring them to furnish sanction from Andhra Pradesh State Wakf Board (for short, 'the Wakf Board') for completing the registration of document No.P142/2006.

The appellants claim to have purchased land measuring Acs.4-15 guntas in Survey No. 257 situated at Mamidipally Village of Saroornagar Mandal, Ranga Reddy District from
Shri Sayeeduddin and three others. On 23-05-2006, they presented the document for registration. After sometime, they filed Writ Petition No. 18874 of 2006 for issue of a direction to respondent No.1 to register the document. By an order dated
13-9-2006, the learned Single Judge disposed of the writ petition by directing respondent No.1 to accept the document and consider the same for registration. The learned Single Judge also directed that if the officer concerned was not inclined to register the document, then he shall record and furnish reasons in terms of Section 71 of the Registration Act, 1908 (for short, 'the 1908 Act').

In compliance of the direction given by the Court, respondent No.1 considered the prayer made by the appellants for registration of the document and issued notice dated 4-10-2006, which can appropriately be termed as notice-cum-order. Respondent No.1 took cognizance of the information available on the website of the Wakf Board which revealed that vide notification dated 02-09-1989 measuring Ac.490-00 situated at Mamidipally Village comprised in

Survey Nos.251 to 262 (including Survey No.257) had been declared as the properties of the Wakf Board. Respondent No. 1 then observed that any transfer of wakf property will be void unless the same is effected with the prior sanction of the Wakf Board and directed the appellants to produce the requisite permission as a condition precedent to the registration of the document. For proper appreciation of the issue raised in the appeal, the relevant extracts of notice-cum-order dated 4-10-2006 issued by respondent No.1 are reproduced below:

> "The persons in the address entry is informed that a sale deed was executed on 23rd May, 2006 by Mr.Sayeeduddin and 3 others in favour of Sri Ram Prakash Agarwal and three others for the agricultural land in Survey No.257, admeasuring Ac.4-15 guntas situated at Mamidipally Village, Saroornagar Mandal, R.R. District was presented for registration on 23-5-2006 and after scrutiny of the document it was orally informed to the parties that it is a land that belongs to AP WAKF BOARD and it requires permission from the AP WAKF BOARD authorities for completion of registration of the document under the provisions of the WAKF ACT, 1995 as the Government of Andhra Pradesh has published in the official Gazette declaring the land as WAKF WOARD LAND in the reference 2nd cited. The executants of the said document has expressed that they will get such a certificate from the concerned authorities and requested to keep the document pending till such a time. The said document was kept pending for registration at the request of the parties but they could not get such a certificate from the concerned authorities and instead they preferred an appeal to the Hon'ble High Court of A.P. and filed a Writ Petition as W.P.No.18874 of 2006 and the High Court of A.P. has passed an order through the reference 4th cited directing the Sub-Registrar as follows:
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> > "…this Writ Petition is disposed of directing the first respondent or any other Registering Officer, that as and when the petitioners submit the document for

registration, the same may be accepted and considered for registration. Be it noted, if for any reason the document presented is not registered, it is incumbent on the part of the Registering Officer to record and furnish reasons under Section 71 of the Act."

In this connection, the executants and claimants to the Pending Document No.P.143 of 2006 of S.R.O. Champapet whose names were given in the address entry are informed to go through the official Web Site of the A.P. WAKF BOARD in the reference 3rd cited, in which the said WAKF BOARD has declared an extent of Ac.4.90 situated at MAMIDIPALLY Village in Survey Nos.251 to 262 as A.P. WAKF BOARD properties and the same may be confirmed by virtue of A.P. Gazette in the reference 2nd cited. By virtue of provisions of Section 51 of THE WAKF BOARD ACT, 1995, any gift, sale or exchange, mortgage of any immovable property which is WAKF PROPERTY, shall be void unless such gift, sale, exchange or Mortgage is effected with the prior sanction of the WAKF BOARD and it means that alienation of Wakf Property without sanction of Board is void.

It is therefore, they are informed that the document in question cannot be registered unless and until prior sanction of the WAKF BOARD is produced before the Registering Authority. It is therefore requested to bring such permission from the WAKF BOARD AUTHORITIES to complete the formalities of registration if the document is otherwise in order. If they fail to bring such permission from the concerned authorities within 90 days from the date of receipt of notice, the document kept pending shall be refused from registration as per the provisions of Indian Registration Act, 1908. They are requested to acknowledge the receipt of this notice by return of post."

The appellants challenged the notice issued by respondent No.1 mainly on the ground that his decision not to register the document till the production of prior sanction of the Wakf Board is per

se illegal and is vitiated due to want of jurisdiction. In the affidavit filed by appellant No.1, it was pleaded that the condition imposed by respondent No.1 for registration of the document is extraneous to the provisions of the 1908 Act and, therefore, his indirect refusal to register the document is liable to be invalidated.

The learned Single Judge declined to examine the appellants' plea on merits and dismissed the writ petition by observing that effective alternative remedies are available to them under Sections 72 and 77 of the 1908 Act. In the opinion of the learned Single Judge, the remedy of appeal available to the appellants under Section 72 is an effective alternative remedy and if they feel aggrieved by the appellate order, a suit can be filed under Section 77 of the 1908 Act.

Shri V. Venkataramana, learned counsel for the appellants argued that the failure of the learned Single Judge to adjudicate on the jurisdictional issue raised by the appellants should be treated as sufficient for setting aside the order under challenge. He relied on the judgment of the Division Bench in **Mandadi Nirmala v. District Collector, Hyd.,**[1] and three judgments of the Single Benches in **P. Narasimha Reddy v. Sub-Registrar, Shameerpet Mandal, R.R. Dist.**[2], **K. Sulochana v. District Collector and District Magistrate, Kurnool**[3] and **K. Mysooraiah v. Sub-Registrar, Cuddapah District A.P.,**[4] and argued that respondent No.1 could not have refused to register the sale-deed by relying on the information available on the website of the Wakf Board.

Shri S.M. Subhani, learned counsel for respondent No.3 supported the order of the learned Single Judge and argued that respondent No. 1 did not commit any illegality by refusing to register the document and calling upon the appellants to produce sanction of

the Wakf Board as required by Section 51 of the Wakf Act, 1995 (for short, 'the 1995 Act'). Shri Subhani emphasized that the property in question had been declared as wakf property after following the procedure prescribed under Sections 4 and 5 of the 1995 Act and, as notification dated 2-9-1989 issued by the State Government is not shown to have been challenged, respondent No.1 rightly refused to register the sale-deed in the absence of prior sanction of the Wakf Board. Learned counsel relied on Section 51 of the 1995 Act and argued that respondent No.1 cannot register any document relating to transfer of wakf property unless prior sanction is obtained from the Wakf Board.

We have thoughtfully considered the respective submissions. Sections 71, 72 and 77 of the 1908 Act, which have a bearing on the decision of this appeal read as under:

> "**71. Reasons for refusal to register to be recorded:--** (1) Every Sub-Registrar refusing to register a document, except on the ground that the property to which it relates is not situate within his sub-district, shall make an order of refusal and record his reasons for such order in his Book No.2, and endorse the words "registration refused" on the document; and, on application made by any person executing or claiming under the document, shall, without payment and unnecessary delay, give him a copy of the reasons so recorded.
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> (2) No registering officer shall accept for registration a document so endorsed unless and until, under the provisions hereinafter contained, the document is directed to be registered.
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> **72. Appeal to Registrar from orders of Sub-Registrar refusing registration on grounds other than denial of execution: --** (1) Except where the refusal is made on the ground of denial of execution, an appeal shall lie against an order of Sub-Registrar refusing to admit a document to registration (whether the registration of such document is compulsory or optional) to the Registrar to whom such Sub-

Registrar is subordinate, if presented to such Registrar within thirty days from the date of the order; and the Registrar may reverse or alter such order.

(2) If the order of the Registrar directs the document to be registered and the document is duly presented for registration within thirty days after the making of such order, the Sub-Registrar shall obey the same, and thereon shall, so far as may be practicable, follow the procedure prescribed in Sections 58, 59, and 60, and such registration shall take effect as if the document had been registered when it was first duly presented for registration.

77. Suit in case of order refusal by Registrar:-- (1) Where the Registrar refuses to order the document to be registered under Section 72 or Section 76, any person claiming under such document, or his representative, assign or agent, may, within thirty days after the making of the order of refusal, institute in the Civil Court, within the local limits of whose original jurisdiction is situate the office in which the document is sought to be registered, a suit for a decree directing the document to be registered in such office if it be duly presented for registration within thirty days after the passing of such decree.

(2) The provisions contained in sub-sections (2) and (3) of Section 75 shall, mutatis mutandis, apply to all documents presented for registration in accordance with any such decree, and, notwithstanding anything contained in this Act, the document shall be receivable in evidence in such suit."

An analysis of the above reproduced provisions make it clear that refusal of the Sub-Registrar to register the document must be accompanied by reasons to be recorded by the officer in Book No.2. This requirement is not applicable when refusal to register the document is founded on the premise that the property is not situated within his domain. If the person executing the document or making claim under the document makes an application, the Sub-Registrar has to supply him a copy of the reasons recorded by him. This section

represents statutory embodiment of one of the facets of rules of natural justice, which obligates every quasi-judicial authority to record reasons in support of its decision and communicate the same to the aggrieved person. Section 72 provides for an appeal against an order passed by the Sub-Registrar refusing to admit a document to registration except when such refusal is made on the ground of denial of execution. Under sub-section (1) of Section 72, the Registrar can reverse or modify the order of the Sub-Registrar. If the Registrar directs registration of the document, then the Sub-Registrar is obliged to take steps for registration of such document. If the Registrar refuses to order registration of the document, then any person claiming under such document, or his representative, assignee or agent can file a suit in the Civil Court for grant of a decree directing registration of the document. Sections 73, 74, 75 and 76, which belong to one family, provide for submission of application to the Registrar where Sub-Registrar refuses to register document on the denial of execution and also for disposal of such application. These provisions, which form integral part of the scheme of the Act, constitute a complete Code unto themselves. Therefore, the remedies of appeal and suit available to the aggrieved person under Sections 72 and 77 of the Act have to be treated as effective alternative remedies.

If the order under challenge is examined in the light of the above analysis of the relevant provisions, we have no hesitation to approve the view taken by the learned Single Judge that the writ petitioners (appellants herein) should be non-suited on the ground of availability of effective alternative remedies. The record of the case shows that while deciding Writ Petition No.18874 of 2006 filed by the appellants, the learned Single Judge had done nothing more than to require respondent No. 1 to record reasons if he was not inclined to register

the same. In compliance of that order, respondent No. 1 adverted to the background in which the document was presented, referred to the information available on the website of the Wakf Board, which revealed that the property in question was wakf property, and observed that the same could not be registered without the prior sanction of the Wakf Board. Whether or not the reason assigned by respondent No. 1 for refusing to register the document presented by the appellants is legally sustainable is not a matter on which we are inclined to pronounce at this stage because, in our considered view, the appellants can challenge the notice-cum-order dated 4-10-2006 issued by respondent No.1 by filing appeal under Section 72 of the 1908 Act. At the cost of repetition, we deem it proper to observe that the remedies available to the appellants under Sections 72 and 77 of the 1908 Act are effective alternative remedies and there is no extra-ordinary reason for making departure from the settled law that the High Court will not entertain writ petition under Article 226 of the Constitution if an effective alternative remedy is available to the petitioner – **A.V. Venkateshwaran v. R.S. Wadhwani**[5], **Thansingh Nathmal v. Superintendent of Taxes**[6], **Baburam v. Zilla Parishad**[7], **Titaghur Paper Mills Co. Ltd. v. State of Orissa**[8], **Champa Lal v. I.T. Commissioner**[9], **J.M. & Co. v. Agricultural I.T. Officer, Assam**[10], **C.I.T. v. Ramendra Nath Ghosh**[11], **Swadeshi Cotton Mills Co. Ltd., v. Government of U.P.**[12], **Gujarat University v. N.U. Rajguru**[13], **State of H.P. v. Raja Mahendra Pal**[14], **L.L. Sudhakar Reddy v. State of A.P.**[15], **State of Bihar v. Jain Plastics & Chemicals Ltd.,**[16], **Harbanslal Sahnia v. Indian Oil Corporation**

Ltd.,[17], **ABL International Ltd., v. Export Credit Guarantee Corporation of India Ltd.,**[18].

In **Harbanslal Sahnia v. Indian Oil Corporation Ltd.** (supra), the Supreme Court considered the situations in which the High Court can exercise power under Article 226 of the Constitution of India notwithstanding the availability of alternative remedy and held:

> "The rule of exclusion of writ jurisdiction by availability of an alternative remedy is a rule of discretion and not one of compulsion. In an appropriate case, in spite of availability of the alternative remedy, the High Court may still exercise its writ jurisdiction in at least three contingencies: i) where the writ petition seeks enforcement of any of the fundamental rights; (ii) where there is failure of principles of natural justice; or (iii) where the orders or proceedings are wholly without jurisdiction or the vires of an Act is challenged. (See **Whirlpool Corpn. v. Registrar of Trade Marks {(1998) 8 SCC 1**}. The present case attracts applicability of the first two contingencies. Moreover, as noted, the petitioners' dealership, which is their bread and butter, came to be terminated for an irrelevant and non-existent cause. In such circumstances, we feel that the appellants should have been allowed relief by the High Court itself instead of driving them to the need of initiating arbitration proceedings."

The case of the appellant does not fall within the ambit of any of the exceptions enumerated in **Harbanslal Sahnia's** case (supra). Therefore, it is not possible for the Court to overlook the fact that they have effective alternative remedies by way of appeal and suit.

We may now advert to the judgments on which reliance has been placed by Shri V. Venkataramana. In **Mandadi Nirmala v. District Collector, Hyd.** (supra), the Division Bench noted that the Sub-Registrar, Bowenpalli had stopped registration of documents in pursuance of communication dated 3-4-1998 issued by Mandal

Revenue Officer, Marredpalli, Hyderabad and held that refusal to register the documents must be relatable to the provisions contained in the 1908 Act and not on the basis of letter written by some executive authority.

In **P. Narasimha Reddy v. Sub-Registrar, Shameerpet Mandal, R.R. Dist.** (supra), a learned Single Judge referred to the judgment of the Punjab & Haryana High Court in **Krishna Gopal Kataria v. State of Punjab**[19] and of this Court in **S. Nagi Reddy v. Joint Sub-Registrar-I, Registration and Stamps, Tirupati**[20] and held that the registration cannot be refused on the basis of direction given by Mandal Revenue Officer. In **K. Sulochana v. District Collector and District Magistrate, Kurnool** (supra), the learned Single Judge reiterated the same view and held that registering authorities are bound to act in accordance with the provisions of the 1908 Act and not under the dictates of extraneous authority.

In **K. Mysooraiah v. Sub-Registrar, Cuddapah District, A.P.** (supra), another learned Single Judge held that dispute relating to title of the property or pendency of the proceedings does not justify refusal of the competent authority to register the document.

In our opinion, the ratio of none of the aforementioned judgments has any bearing on the present case because, refusal of respondent No.1 is not founded on any direction given by other authorities. Rather, it is based on his own analysis of the facts and the relevant statutory provisions. Similarly, the direction given by him for production of prior permission of the Wakf Board cannot be termed as extraneous because, as per notification dated 2-9-1989, the property in question has been declared as wakf property.

For the reasons stated above, we hold that the learned Single

Judge did not commit any error by refusing to entertain the appellants challenge to notice-cum-order dated 04-10-2006 passed by respondent No. 1 and the appeal is liable to be dismissed. Ordered accordingly.

As a sequel to dismissal of the appeal, WAMP No. 2678 of 20006 filed by the appellants for interim relief is also dismissed.

G.S.SINGHVI, CJ

C.V.NAGARJUNA REDDY, J

06-12-2006

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[1] 2000 (2) ALD 725
[2] 2005 (2) ALD 807
[3] 2005 (4) ALD 539
[4] 2005 (5) ALD 581
[5] AIR 1961 SC 1506
[6] AIR 1964 SC 1419
[7] AIR 1969 SC 556
[8] (1983) 2 SCC 433
[9] AIR 1970 SC 645
[10] AIR 1970 SC 1980
[11] (1972) 4 SCC 379
[12] (1975) 4 SCC 378

[13] AIR 1988 SC 66
[14] (1999) 4 SCC 43
[15] (2001) 6 SCC 634
[16] (2002) 1 SCC 216
[17] (2003) 2 SCC 107
[18] (2004) 3 SCC 553
[19] AIR 1986 P & H 328
[20] 1999 (4) ALT 556